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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12

13 FINJAN LLC,
14 Plaintiff,
15 v.
16 PALO ALTO NETWORKS, INC.,
17 Defendant.

Case No. 3:14-CV-04908-RS
**PALO ALTO NETWORKS’
MOTION AND NOTICE OF
MOTION FOR LEAVE TO SUBMIT
SUPPLEMENTAL CLAIM
CONSTRUCTION AUTHORITY**

Date: Thursday, May 23, 2024
Time: 1:30 p.m.
Dept: Courtroom 3, 17th Floor
Judge: Hon. Richard Seeborg

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on Thursday, May 23, 2024 at 1:30 PM, or as soon thereafter as the matter may be heard in the United States District Court for the Northern District of California, San Francisco Division, in Courtroom 3 before the Honorable Richard Seeborg, Defendant Palo Alto Networks, Inc. (“PAN”) will and hereby does move pursuant to Civil Local Rule 7-3(d) to provide supplemental authority for the upcoming claim construction hearing.

RELIEF REQUESTED

PAN seeks leave to submit as supplemental authority deposition testimony pertinent to PAN’s argument that the term “programming language” as used in claims 1, 4, 5, 6, and 22 of U.S. Patent No. 8,225,408 (the “’408 Patent”) is indefinite. PAN’s proposed supplemental authority consists of excerpts of testimony, including two associated exhibits, from the deposition of Dr. Paul Min, Plaintiff Finjan LLC’s (“Finjan”) technical expert for the ’408 Patent.

STATEMENT OF ISSUES

Whether the Court should grant leave for PAN to submit supplemental authority consisting of the testimony and exhibits provided as Exhibits 1-3 to the attached Declaration of Michael DeStefano (“DeStefano Declaration”).

STATEMENT OF RELEVANT FACTS AND

MEMORANDUM AND POINTS OF AUTHORITIES

PAN submits this Notice of Motion and Motion for leave to submit supplemental authority pursuant to Civil Local Rule 7-3(d). PAN seeks to submit as supplemental authority excerpts of testimony, and two associated exhibits, from the deposition of Dr. Paul Min, Finjan’s technical expert for the ’408 Patent that is relevant to the parties’ dispute regarding the construction of “programming language.” Finjan first identified Dr. Min as an expert on September 12, 2022, nearly one year after claim construction briefing was completed on September 20, 2021. Dr. Min was not available for deposition until the scheduled expert discovery period and PAN completed

his deposition on invalidity issues on March 16, 2023¹. Accordingly, Dr. Min was unknown to PAN and his deposition testimony was unavailable during claim construction briefing in this case. The excerpts of Dr. Min's testimony, and associated exhibits, that PAN seeks to submit are referenced below and contained in Exhibits 1-3 to the attached DeStefano Declaration.

Dr. Min testified that (1) the '408 Patent did not use "programming language" according to its plain and ordinary meaning, (2) the inventors of the '408 Patent acted as their own lexicographers for "programming language," and (3) that "URI" would not be considered a "programming language" under the "plain and ordinary" meaning of that term but would be considered a "programming language" according to the definition in the '408 Patent. (*See generally* 3/16/23 Min Dep. Tr. at 60:20-70:23 (DeStefano Ex. 1); Min Deposition Exhibit 36 (DeStefano Ex. 2); Min Deposition Exhibit 36-A (DeStefano Ex. 3).)² For example, Dr. Min testified as follows:

“Q: Okay. And do you believe that programming language as used in the '408 Patent has the same definition or has a different definition?

A: The programming language, the term used in the '4[0]8 patent, the inventors have given a – its own lexicographical term that include the other items that is not - - -

Q: Okay.,

A: in here.”

(3/16/23 Min Dep. Tr. at 63:2-7 (DeStefano Ex. 1))

“Q: What is your understanding of programming language given by the '408 Patent?

[objection to form]

A: The programming language given by the '408 Patent, general understanding is the same as what I have written before; but this time, they – The inventors of the '408 patent specifically include these four as

¹ PAN deposed Dr. Min on March 16, 2023 on the opinions contained in his validity report, and on March 17, 2023 on the opinions contained in his infringement report.

² Reference to “DeStefano Ex. ____” are to exhibits to the Declaration of Michael DeStefano in Support of PAN's Motion for Leave to Submit Supplemental Claim Construction Authority.

examples of a – a programming language. There is HTML, URI, Javascript, Visualbasic, VBscript. Those four items [sic] are specific examples of a programming language; and they have a right to use that as a – their own lexicographical exercise.

Q: Because they defined it?

A: That’s right.

(*Id.* at 65:12-66:3)

“Q: So then the definition of programming language in the ’408 Patent is different than your understanding of programming language before you read the ’408 patent, true?

* * *

A: . . . But, once again, the inventors of the ’408 Patent has a right to be their own lexicographic – lexicographer, so they define the URI to be a part of that programming language, too.

Q: You think a patentee can be their . . . own lexicographer?

A: In the – in the context of their own patent, yeah. They can define term and use that term as they wish.

Q: And you think that the inventors of the ’408 Patent were their own lexicographers?

A: In defining their own term, yes.”

(*Id.* at 67:1-25)

Dr. Min confirmed differences between the plain and ordinary meaning of “programming language” and the meaning of “programming language” as used in the ’408 Patent on Exhibits 36 and 36-A to his deposition. On Exhibit 36, Dr. Min wrote down his understanding of the plain and ordinary meaning of “programming language” and confirmed that it would not include URI (not circled). (*See* DeStefano Ex. 2.) On Exhibit 36-A, Dr. Min wrote down his understanding of the meaning of “programming language: as used in the ’408 Patent and confirmed that it did include URI (circled). (*See* DeStefano Ex. 3.) Excerpts from Exhibits 36 and 36-A are set forth below:

| | |
|---|--|
| <div> <div>Uniform Resource Identifier (URI)</div> <div>Python</div> </div> <p>Def: <u>Programming language</u> syntax of key words/phrases used to make binary executable code for the machine in a specific manners. (Paul Min on-the-fly definition)</p> | <div> <div>Uniform Resource Identifier (URI)</div> <div>Python</div> </div> <p>Def: Programming language given by the '408 Patent, which specifically includes HTML, URI, Javascripts, Visual Basic VB script.</p> |
| Exhibit 36 (excerpt, blue ink written by Dr. Min) [plain and ordinary meaning] | Exhibit 36-A (excerpt, blue ink written by Dr. Min) ['408 Patent meaning] |

(See also 3/16/23 Min Dep. Tr. at 61:20-2, 62:25-64:7, 65:3-66:3, 66:19-23, 67:13-68:11)

PAN submits that Dr. Min's testimony is relevant to the construction of "programming language" because it supports PAN's position and contradicts Finjan's position. PAN therefore respectfully requests leave pursuant to Civil Local Rule 7-3(d) to submit Exhibits 1-3 to the DeStefano Declaration as supplemental support for PAN's proposed construction of the term "programming language."

1 DATED: April 17, 2024

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ATTESTATION PURSUANT TO CIVIL L.R. 5-1(i)

In accordance with Civil Local Rule 5-1(i)(3), I attest that concurrence in the filing of this document has been obtained from any other signatory to this document.

/s/Kyle W.K. Mooney

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